IN THE

Supreme Court of the United States

OCTOBER TERM, 1925

No. 609

HARTSVILLE OIL MILL,
Appellant,
vs.
THE UNITED STATES,
Appellee.

Appeal from the Court of Claims.

MEMORANDUM.

For the information of the Court and in further answer to the question of this Court, made during oral argument as to the quantity of munition linters, of cotton seed and its other products, which the Hartsville Oil Mill had on hand on December 30, 1918, the appellant respectfully calls the Court's attention to the following:

1.

Finding XVIII, R. 60, shows specifically that the appellant and the other crushers had on hand on December 30, 1918, 270,000 bales of munition linters. This finding further shows that the proposition made to all the mills, including the appellant, at that time was an entire breach of the contract of September 26, 1918, and in the language of the finding that * * * "The United States would breach the contract of September 26, 1918, would refuse to accept or pay for any linters

whatever, either those on hand, accepted, inspected and tagged, or thereafter to be produced, and the plaintiff and other cotton seed crushers could seek their remedy in the courts."

2.

Finding XIX, R. 60, shows that "the plaintiff and other cotton seed crushers, preserving their protest, etc."

3.

Finding XX, R. 61, shows that "the plaintiff and other cotton seed crushers" were dealt with by the Government thereafter in respect of the carrying out of the ultimatum of December 30, 1918.

4.

The "Modification of Seller's Contract of Sale," R. 51, Par. 3, was signed by the Government by its Agent and by the appellant, and specifically referred to "all linters produced prior to and on hand as of January 1, 1919."

5.

In addition to the above specific findings, in the memorandum opinion of the Court of Claims, it is stated:

> "It is true that the plaintiff protested against signing the contract and asserted that it signed it only because it was under the pressure of financial necessity. It signed because it believed that the terms proposed by the Government were the best it could get and it required money for the conduct of its business and feared financial disaster if it refused to sign." R. 61.

6.

We respectfully submit that the above specific citations from the findings and the opinion, together with others in the record not set out in detail herein, and the logical inferences that necessarily flow therefrom, clearly show that the appellant had some quantity of munition linters on hand *(the exact amount of which is set out in the testimony in the Court of Claims and not disputed)*, and, therefore, was in a situation where the threatened breach applied specifically and sufficiently to it to sustain the appellant's position on this appeal.

However, if this Court finds it necessary or desirable to have further facts as to the amount of munition linters, or cottonseed and its other products which the appellant had on hand December 30, 1918, it is respectfully suggested that it is within the power of this Court, under the statutes and procedure, to direct the Court of Claims to make a specific finding of fact on this particular point. The record in the Court of Claims establishes these facts in detail by clear and uncontradicted testimony.

Respectfully submitted,

CHRISTIE BENET,
WADE H. ELLIS,
CHALLEN B. ELLIS,
DON F. REED,
Attorneys for Appellant.

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THE UNITED STATES, *Appellee.*	No. 609.

PETITION FOR STAY OF MANDATE AND MODIFICATION OF JUDGMENT

Comes now the appellant in the above entitled action and respectfully petitions this Honorable Court to grant a stay of mandate and modification of judgment, on opinion rendered by Mr. Justice Stone on April 12, 1926, and in support of such petition respectfully shows:

I.

STATEMENT.

In the opinion denying relief to appellant in this case this Court calls attention to the insufficiency of the findings of the Court of Claims on certain issues in the case, which this Court deemed necessary to a decision on the theory upon which this Court decided the case. The missing facts related to the situation

of appellant and the exact injury threatened it at the time appellant alleged it was coerced by the officers of the Government to accept the ultimatum of December 30, 1918.

Attention of the Court has been called to the fact that the necessary proof to sustain ample and complete findings on this subject was before the Court of Claims, and is now in the records on file in that Court. The Court of Claims, however, in the findings which it sent up to this Court, omitted findings on the subject referred to, the Court of Claims having treated the case as a representative case, having decided it upon a theory which made immaterial such particular findings, but which this Court now deems essential to a correct determination of the issues.

In such a situation in a case coming from the Court of Claims, we respectfully urge, on the authority of *Winton vs. Amos, 255 U. S. 373, 41 Sup. Ct. Rep. 342, 65 L. ed. 684,* that the proper practice would be to remand the case to the Court of Claims, with directions to supply the missing findings of fact.

We therefore ask that the judgment be modified, and instead of simple affirmance, that the case be sent back for further findings in accordance with the action of this Court in similar cases.

There is a special reason why that course should be followed in this case. This appeal was prosecuted on behalf of 285 cottonseed oil mills, each having a petition on file in the Court of Claims, and each of which can make the proper proof as to the elements of damage, as well as proof of the other facts found by the Court of Claims in the Hartsville case.

There is on file in the Court of Claims in case numbered Congressional 17341, Rose City Cotton Oil Mill

vs. U. S., a stipulation signed by attorneys for the mills and for the government, to the effect that the facts found by the Court of Claims in the Hartsville Oil Mill Case "shall be taken and regarded as the facts in the following listed cases, the same being all of the cases brought under Senate Resolution No. 448, etc., without the necessity of either party again taking testimony to prove the same."

> "Provided, however, that if the claimant shall finally prevail in the Hartsville case, plaintiffs in the case herein listed shall be required to make due proof of ownership and non-assignment of their respective claims and shall likewise be required to make due proof of their corporate identity and of their loyalty, as well as due proof of the amount of damage sustained respectively by the said plaintiffs."

Each of the claimants is able to make the proof required, and it is inequitable and unjust that each of the cases should be adversely affected because the Court of Claims made no finding as to the threatened injury to the Hartsville Oil Mill, notwithstanding the fact that ample proof of such injury was before it.

II.

ARGUMENT.

That this case turned on the insuffiency of the findings is shown by the following quotations from the opinion:

"A difficulty encountered by the appellant at the outset is that this view is not supported by the findings made. On its own theory of the case, appellant must prove the probable injury which it would have suffered from the threatened refusal of the Government to carry out its contract, and that fear of that loss was the effective cause of its executing the settlement contract."

"There is no finding with respect to the nature or extent * * * of the loss which appellant would have suffered if, on December 30, 1918, the Government had refused to go forward with its contract, or that the legal damages for such breach of contract would not have been adequate to compensate for its loss. There is no finding that appellant was induced to sign the settlement contract by fear of the consequences of a refusal to sign."

This being the case it is obvious that if these facts had been covered by a finding of the Court of Claims a different case would have been presented to this Court and the ground of the decision-insufficiency of proof-would not have been decisive.

It is conceded on all sides that abundant evidence was and is before the Court of Claims to support a specific finding of all these facts necessary to supply the insufficiency of proof.

The established remedy in such a situation is that the appeal be remanded to the Court of Claims for additional findings of fact, which are vital to a proper decision of the issues involved, as was done in *Winton vs. Amos, supra,* which decision is controlling.

In this appeal, as in the Winton case

> "The facts as found are inconclusive respecting the crucial point."

That was an appeal from a decision of the Court of Claims denying to the appellant the right to compensation for legal services rendered to numerous Choctaw Indians, over a period of years. Recovery was sought upon a *quantum meruit* basis, after certain contracts between appellants and individual Choctaws had become ineffective by operation of law.

> "In authorizing the present suit, Congress recognized that it was impracticable to bring before the Court all interested individual Choctaws; hence, treating them as a class, it designated the representatives who should defend them, by analogy to the familiar practice in Equity Rule 38 (226 U. S. 659, 57 L. ed. 1643, 33 Sup. Ct. Rep. XXIX.)"

The same object was sought in the present suit, without any action of Congress, however, as evidenced by the stipulation filed to the effect that the instant appeal shall control all other cases. The object was to avoid a multiplicity of suits, which is and ought to be a very commendable one.

In the findings of the Court of Claims in the Winton case there were insufficient findings, and requests were made, prior to appeal, for additional findings, but such requests were not made within the 60-day period. The Court of Claims, however, denied the request for additional findings upon the merits, deeming them immaterial, rather than upon the fact of failure to move

within the proper time, holding that such requests were too vague and were insufficient. Such additional findings were vital to appellant's case.

This Court held, however, that although the appellant had not complied with the rules in reference to motions for additional findings, and notwithstanding the fact that the requests were not sufficiently definite to enable the Court of Claims to pass upon them, the cause should be remanded for further findings of fact.

This Court, as an act of justice, went to extreme lengths to assist in getting before it all of the facts which were pertinent.

Surely, the present case would seem to be within the procedure adopted by this Court in the Winton case, and it is respectfully submitted that this Court, by the exercise of its discretion, could have before it testimony which would completely supply the deficiency in proof raised in the opinion, in the first and second paragraphs on page 4, and which lack of proof was one of the compelling reasons for denying the appellant relief.

This would seem to be particularly true where the testimony establishing these facts was not contradicted by the government but was overlooked, or omitted through apparent inadvertence, by the Court of Claims in making its findings. This omission by the Court of Claims is further evidence of the fact that the Court of Claims considered the case from the standpoint of the entire industry and not from the standpoint of this appellant or any individual mill.

The record in this case clearly shows that while the proceeding is brought in the name of the Hartsville Oil Mill, that it is in fact and in effect a proceeding

by 285 cottonseed crushers mentioned in Senate Resolution No. 448, Senate Bill No. 4479, March 3, 1923, and that all the cases have been prosecuted in the name of one of the claimants.

Referring briefly to the findings of the Court of Claims, Finding VI (R. 56) sets forth the executive order of the President of the United States placing under license control of the United States Food Administration all dealers in cottonseed and manufacturers of cottonseed products, including this appellant. In Finding XI (R. 57) is set forth Circular 49 of the Food Administration which set out the prices that appellant and all other cottonseed crushers were to pay for cottonseed, and the prices at which the derivative products were to be sold, referred to as the stabilization scheme of the Food Administration. In Finding XVII (R. 60), the final offer of the representatives of the government was made to the Linter Committee representing all of the cottonseed crushers, and the notice was that unless ALL of them accepted such offer within one hour from the time it was made, the government would breach the contract of September 26, 1918, and that appellant and all other cottonseed crushers could seek their remedy in the courts.

In Finding XXIII (R. 63), it is stated that appellant and all other cottonseed crushers were under orders of the Food Administration to maintain the price of cottonseed and cottonseed products theretofore fixed by the Food Administration, and to continue the manufacture of such products for the entire crop year of 1918-1919.

There is further evidence that this pressure was applied to the entire industry and the far-reaching effect on other lines of business in the South, in Find-

ing XIX (R. 61), which states that on December 30, 1918, when the Government officers made their final offer to the cottonseed crushers, that there were numerous crushers, farmers, bankers, as well as others interested in the cottonseed industry, awaiting the outcome of the conference with the officers of the Government.

It therefore appears that from the entire course of this case, in the testimony, in the record before the Court of Claims and in the findings of that Court, this case has been one that was construed as affecting the entire cottonseed crushing industry, and each individual member thereof, and not as applying solely to the position of this individual appellant. If relief now is to be denied in each of the individual cases, for the reason that there has been no apportionment of the loss among the individual members, the Government by the very simple expedient of saying that they were not individually affected by the conduct of the officials on December 30, 1918, escapes liability for what was described by counsel for the Government in the argument in the Supreme Court of the United States to have been "illegal, unjust and reprehensible," and which Mr. Justice Stone condemns in no uncertain terms.

There is a specific finding by the Court of Claims that the appellant was actually damaged in the sum of $5,967.45 (Finding XXII, R. 63) by execution of the Modification of Seller's Contract of Sale, after the threat of breach by the Government, and thus suffered a loss of a definite and substantial sum. That court further stated in its memorandum opinion (R. 65) that the modified contract was signed because the

plaintiff (appellant) "believed that the terms proposed by the Government were the best it could get and it required money for the conduct of its business, and feared financial disaster if it refused to sign." These findings certainly raise a strong presumption of the pressure to which claimant was individually subjected.

It is therefore apparent that the Court of Claims did treat this case as a test case for 285 mills and did, in addition, treat the same as an individual case in which this appellant's damage was separate, distinct and definite, and that such damage was the direct result of the threats of the Government officials, made to each of the 285 claimants separately and individually, as well as collectively.

If this Court should question as to why additional findings were not requested, we submit that the effective date for the repeal of Section 242 of the Judicial Code, under which this repeal is prosecuted, was May 14, 1925. The decision of the Court of Claims was rendered on May 11, 1925, four days prior to such repeal, and there was not sufficient opportunity to move for such additional findings and have that Court rule thereon and preserve the right of appeal under the old rule. There is the further fact that it was considered that the findings of that Court, meager and inconsistent as they were, were still amply sufficient to establish the right of the appellant to relief.

Specific reference is made to reply brief of appellant from which the following quotation is made, as to the situation of this appellant and the entire industry on December 30, 1918:

> "This situation was fully alleged and set forth in the petition (R. 15-16-17) and evidence in sub-

> stantiation thereof was before the Court, and the Court made no finding contrary to or limiting such facts. It is the position of the appellant that the matters thus alleged in the petition were such as the Court could take judicial notice of, and it is manifest from the opinion of the Court of Claims that such notice was taken. The facts so alleged find support also in public documents of the Government, and are set forth at length in reply brief of the appellant, to which attention is respectfully called in this connection."

This suggests the question which this appellant has made all through this litigation, to-wit, that one of the compelling reasons for acceptance of the ultimatum of the Government, of December 30, 1918, was that if the modified contract were not accepted, the stabilization scheme of the Food Administration would crash, and such a crash would mean disaster not only to the cottonseed crushers, but to the farmers, bankers, and to the entire South.

It was set out in the petition (R. 15-16) and not questioned or modified by the findings of fact that this appellant and the other cottonseed crushers were committed and obligated to the farmers of the South—and to the Food Administration, to pay $70 per ton for cottonseed, for each and every ton of cottonseed produced during the season of 1918-1919; whether brought to the market early or late; that the Food Administration had assured the farmers that such price would be paid; that if the Food Administration had failed to maintain their stabilization scheme the result would have been an enormous loss in seed already purchased, and in the products already manufactured from such

seed. The element of good will in the entire industry with the farmers, bankers and business men of the South was at stake, and this fact was known to, and taken advantage of, by the officers of the Government. (R. 16-17.)

Taking into consideration the tremendous pressure that was on all cottonseed crushers and on others to maintain the stabilization scheme, which had been established by one branch of the Government and was then being wholly ignored by the Ordnance Department, another branch, and the further fact that the Government threatened to refuse to take any part of the 270,000 bales of linters already accepted, inspected and tagged, as to which the obligation of the Government was fixed, it will be seen that this pressure was such that it destroyed the freedom of action of the cottonseed crushers, and of this appellant, one unit of the industry, with its pro-rata share of the total prospective loss.

We respectfully ask that this Court contemplate for a moment the consequences if this threat of the Government had been carried into effect and the result to this appellant and to the whole cottonseed crushing industry; with enormous quantities of linters on hand which were not commercially valuable and which belonged to the Government; with large quantities of seed on hand which had been bought at a price established and maintained by the Government and which would heat and rot if kept for any length of time; with large quantities of cottonseed products on hand, produced from seed, purchased at the Government price; and in addition, the solemn obligation of this appellant and all other cottonseed crushers to the farmers to pay

$70 per ton for every ton of seed produced during the season 1918-1919, the loss would have been appalling. And everything depended upon the stabilization scheme of the Food Administration, a structure reared by the Government and which the same Government threatened to wreck, and the only reason it was not wrecked was because this appellant and the other cottonseed crushers at all times 100 per cent patriotic in their observance of this and other war measures, chose to submit for the time to the unconscionable, illegal and unjust demands of bureaucratic officials, save their industry from utter chaos and financial ruin and await the day when reason and justice should be restored. The Court of Claims specifically stated that appellant

> "feared financial ruin if it failed to sign." (R. 65.)

This situation was such that the appellant and the other cottonseed crushers could not stand on their legal rights and submit their differences to the courts. Had the Government carried out its threat of December 30, 1918, and it had the power to do so, before a petition could have been prepared to get the matter before any court, much less a hearing thereon, the whole financial and commercial structure of the South would have toppled. The question would then have been one of dollars and cents to the courts, but on December 30, 1918, there was an element involved which could not be measured in dollars and cents.

We respectfully submit that appellant has shown that the remedy at law, in view of the probable consequences of the threatened action of the Government would have been wholly inadequate.

It is manifest that a hardship will be worked upon all of the claimants in the 284 remaining cases, if the decision of the Court of Claims is affirmed, in view of the stipulation referred to. The effect of the decision of this Court is to state that the Hartsville Oil Mill is not entitled to relief, for the sole reason that it failed to prove the proportion which it shared in the certain loss which accompanied the threats of the Government, and this Court cannot hold for the appellant, for the reason that the Court of Claims failed to make a finding on the subject.

The effect of the entire proceeding is to say, that since the Court of Claims failed to make a proper finding of fact which would entitle one claimant to relief, 284 other claims in which proof of damage, as well as proof of all other elements upon which the case is based, can be made, shall be denied the right to make their proper proof. This is in effect to deny each of the claimants the right to his day in Court, and to enable the Court of Claims to escape a mandatory duty under section 151 of the Judicial Code, requiring it to find and report to Congress the facts of each case, and whether each of the claimants is entitled to relief, legally or morally, by the simple expedient of failing to make appropriate findings in one case which the evidence warrants.

There is another and further reason why this case should be remanded to the Court of Claims for additional findings of fact, and that is, that the negotiations referred to in par. 5, on page 2, of the opinion were instituted by Government officers without any legal right under the provisions of the cancellation clause of the contract of September 26, 1918, which provided for cancellation only in the event of the termination of the present war, which event had not then

come to pass. The appellant contended throughout such negotiations that its legal rights, under a proper construction of the contract, were denied by the representatives of the Government. These negotiations were therefore instituted and carried on by the Government in the spirit of coercion of this appellant and the other cotton seed crushers, and the Government adhered to its illegal construction of the cancellation clause of the contract of September 26, 1918, and compelled the appellant to negotiate against its will. (Finding XIX, R. 60.)

In the opinion of this Court no mention of the illegal construction thus placed upon the contract of September 26, 1918, by the officers of the Government, and its coercive effect upon this appellant and the other cottonseed crushers, is made.

In the opinion of this Court in the second paragraph on page 5 it is stated that the *Freund, Hunt* and *Smith* cases, relied upon by this appellant, present different considerations than those involved in this case. The point of difference pointed out is that the contractors in those cases were called upon to perform extra services, representatives of the Government having assumed the position that the services demanded were stipulated for by the terms of the contracts. It was held that such services were not so stipulated and the contractors did not assent to the Government's construction.

The only essential difference between those cases and this case is that the contractors in the *Freund, Hunt* and *Smith* cases, while protesting against the construction placed upon their contracts by officers of the Government, and under threats of those officers, proceeded to carry out their contracts according to such erroneous and illegal construction, without sign-

ing any other agreement, and thereafter brought suit for additional compensation; and in this case the action of the Government officers was the same, as to their illegal and erroneous construction of the contract, as to the threats, as to the conduct of the officers in dealing with the contractors (which conduct this Court describes as "discreditable" and "injurious") as to performance, as to protest and as to consequences, but the cottonseed crushers signed a supplemental contract, wherein they bowed in submission to such erroneous construction.

That is to say, if threats are made against four contractors under like circumstances, and three of them accede to the demands which accompany the threats, but enter upon performance without agreeing to perfrom, they shall be rewarded, while the fourth, entering upon performance after agreeing to perform, shall be denied relief, although each had preserved his protest. If this is the law, we submit that no cause of action could be based on duress, if the person against whom the threats were made, protested, preserved his protest, but agreed in writing to go ahead regardless of such protest. If the party with a pistol at his head submits under protest and performs the illegal demands he can recover; if under the same circumstances he signs under protest an agreement acceding to the illegal demands he is precluded from recovery.

In paragraph one on page 5 of the opinion it is stated:

> "This threat was discreditable to the officers who made it and injurious to the Government, whose high obligation to deal justly and according to law, with those with whom it contracts might well have been their first concern."

Conversely, the officers acted discreditably, unjustly and not according to law. The settlement contract was forced on the appellant and the other crushers in the face of the stabilization scheme of the Government as a war measure adopted to insure the winning of the war, and in which this appellant and all other crushers cooperated one hundred per cent. Surely the parties were not dealing on equal terms when the Ordnance Department threatened to breach a solemn contract of the Government without legal right or excuse, and knowing that appellant and the other crushers could do nothing but accept what they had to offer.

If the action of the officers was successful in evading the "solemn obligation" of the Government to this appellant and the other crushers, as it appears to have been, then such actions would seem to be the proper subject for commendation, rather than for censure.

It is difficult to reconcile the statement above quoted, with the statement from the Freund case where identical actions were indulged in by the officers of the Government:

> "We cannot ignore the suggestion of duress there was in the situation, nor the questionable fairness of the conduct of the Government, aside from the illegality of the construction of the contract insisted upon."

And

> "But sometimes such contract provisions have been interpreted as if they enable those officers to remold the contract at will." *Freund vs. U. S.* 260, U. S. 60.

This sharp criticism of such "discreditable" conduct was a controlling factor in the *Freund* case in awarding the appellant relief, while in this case such conduct, while condemned, was not taken as a circumstance entitling appellant and the other crushers to that relief to which they are legally, morally and in good conscience entitled.

III.

CONCLUSION.

The gist of our argument is this: If, in a case decided by the Court of Claims important facts are omitted from the findings which may be immaterial to the lower court's theory of the case and are therefore omitted, but which are vital to a decision on the appellate court's theory of the case, and if, nevertheless, the appeal must be decided without obtaining the actual facts in the record in the Court of Claims, then manifestly, in the many instances where the theory of the Court of Claims may be different from that of this Court, the right of appeal is effectively cut off.

Since there is established precedent for remedying this situation (*see Winton vs. Amos, supra*), and since it cannot be definitely known what facts might be essential to this Court's view of the law until after the opinion is handed down, we respectfully request the Court to take the necessary steps to apply the remedy here, and prevent the injustice not only to this appellant, but to all the other plaintiffs in the Court of Claims whose cases turn on this one.

Wherefore, your petitioner respectfully prays this Honorable Court that the mandate of this Court be

stayed until the further order of the Court herein; and that this Court modify the judgment of April 12, 1926, and remand the case to the Court of Claims for further findings of fact.

Respectfully submitted,

CHRISTIE BENET,
Attorney for Petitioner.

WADE H. ELLIS,
CHALLEN B. ELLIS,
DON F. REED,
Of Counsel.

STATE OF SOUTH CAROLINA,
COUNTY OF RICHLAND.

Christie Benet being first duly sworn deposes and says that he is counsel for the Hartsville Oil Mill, appellant in the case entitled Hartsville Oil Mill vs. The United States. Appeal from the Court of Claims, No. 609. That as such counsel he signed the petition for stay of mandate and modification of judgment.

That this petition is presented in good faith and not for delay.

(Signed) CHRISTIE BENET.

Sworn to and subscribed before me this 17th day of May, 1926.

(Signed) J. M. CANTEY, JR.,
Notary Public for S. C.

(SEAL)